

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA
HARRISBURG, PENNSYLVANIA**

UNITED STATES OF AMERICA
ex rel.
ADAM BOYCE

Plaintiffs,

V.

**ED4MIL, LLC; CALDWELL
COLLEGE, INC.; and PENN
FOSTER EDUCATION GROUP,
INC. d/b/a PENN CAREER SCHOOL**

Defendants.

CASE NO.

**FILED IN CAMERA AND
UNDER SEAL PURSUANT TO
31 U.S.C. § 3730(b)(2)**

COMPLAINT UNDER THE *QUI TAM* PROVISIONS OF THE FALSE CLAIMS ACT

INTRODUCTION

1. This is a *qui tam* action brought by Relator, Adam Boyce, on behalf of the United States of America, pursuant to the Federal False Claims Act, 31 U.S.C. § 3729 *et seq.* (“FCA”). The false claims at issue were caused to be made by Ed4Mil, LLC, Caldwell College, Inc., and Penn Foster Education Group, Inc. d/b/a Penn Foster Career School in order to deceive students who are members of the military and the National Guard into applying for, and Educational Support Officers, Army Continuing Education System Counselors, and their equivalents into authorizing the payment of, excessive Tuition Assistance funds. Defendants’ actions caused monetary damage to the United States Department of Defense, and allowed Defendants to receive federal funds to which they were not entitled.

2. The FCA provides that any person who submits a false claim to the government is liable for a civil penalty of between \$5,500 and \$11,000 for each such claim, and three times the amount of the damages sustained by the government. The Act permits persons having information regarding a false or fraudulent claim against the government to bring an action on behalf of the government and to share in any recovery. Pursuant to 31 U.S.C. § 3730(b)(2), this complaint must be filed *in camera* and under seal, without service on the defendants. The complaint remains under seal while the government conducts an investigation of the allegations in the complaint and determines whether to join the action.

3. Pursuant to the FCA, Relator seeks to recover on behalf of the United States any damages and civil penalties arising from Defendants' causing false and/or fraudulent statements to be made to the United States Armed Forces and the National Guard in order to receive excessive funds from its Tuition Assistance programs to which Defendants were not entitled. Defendants knowingly submitted, caused to be submitted, and continue to submit and cause to be submitted, claims for payment to the United States Armed Forces and the National Guard based upon false and deceptive information.

JURISDICTION AND VENUE

4. This action arises under the False Claims Act, 31 U.S.C. § 3729 *et seq.* This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 31 U.S.C. § 3730, and 28 U.S.C. § 1345.

5. This Court has personal jurisdiction over Defendants pursuant to 31 U.S.C. § 3732(a), which authorizes nationwide service of process. Defendants can be found in, reside in, or have transacted business in the Middle District of Pennsylvania.

6. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because

Defendants can be found in, reside in, or have transacted business in the Middle District of Pennsylvania, and many of the alleged acts occurred in this District.

7. Relator is an “original source” as defined by the False Claims Act.

PARTIES

8. Relator, Adam Boyce, is a resident of Mechanicsburg, Pennsylvania, and has been employed as a marketing manager at Defendant Ed4Mil, LLC since July 2010. Relator has a Bachelor of Science degree in Business Management, as well as a Masters of Business Administration degree. Prior to his employment with Ed4Mil, he gained extensive experience in the operation of for-profit educational institutions as an employee of ITT Technical Institute, YTI Career Institute, and Kaplan Career Institute.

9. Defendant Ed4Mil, LLC is located at 7501 Carlisle Road, Wellsville, Pennsylvania 17365. Ed4Mil is owned and operated by David J. Alvey, Ginney C. Becker, and Bartolome A. Varone, all of whom reside in the Harrisburg, Pennsylvania area. Ed4Mil employs a headquarters staff of ten, and a nationwide recruiting staff of forty.

10. Defendant Caldwell College, Inc. is located at 120 Bloomfield Avenue, Caldwell, New Jersey 07006. Caldwell College was founded in 1939 as a Catholic, four-year liberal arts institution. Current enrollment is approximately 2,300 at the school’s campus.

11. Defendant Penn Foster Education Group, Inc. d/b/a Penn Foster Career School (herein after referred to as “Penn Foster”) is a for-profit, distance education vocational school founded in 1890 in Scranton, Pennsylvania. It is located at 925 Oak Street, Scranton, Pennsylvania 18515. Its current enrollment is approximately 140,000 students. In 2009, Penn Foster Education Group, Inc. was acquired by the Princeton Review for \$170 million.

FACTUAL ALLEGATIONS

Defendants Engaged in a Fraudulent Scheme to Induce Officers of the U.S. Military, including National Guard Educational Support Officers, to Authorize Fraudulent, Excessive Claims for Payment to the Department of Defense

12. The Tuition Assistance (“TA”) program is a Department of Defense (“DoD”) program that provides financial assistance to service members for voluntary off-duty education programs. TA is available for courses that are offered in the classroom or by distance learning. The courses must be offered by colleges that are accredited by accrediting agencies recognized by the U.S. Department of Education.

13. In addition to degree programs, TA is available to soldiers who wish to complete a high school diploma or certificate programs. TA is not authorized for programs beyond a master’s degree.

14. The Department of Defense has directed a uniform TA fiscal policy across the military services, effective beginning in October 2002. The per-semester hour cap is \$250, and the fiscal year ceiling is \$4500. The United States Armed Forces will pay 100 percent of the tuition and authorized fees charged by an approved college up to the established per-semester hour cap and fiscal year ceiling.

15. Defendant Ed4Mil employs a recruiting staff that currently targets enlisted members of National Guard units, Army Reserve units, and other members of the military in sixteen states for participation in online educational programs facially offered by Defendant Caldwell College. Defendant Ed4Mil’s recruiters are paid a per-head recruiting fee for each guardsman or member of the U.S. military recruited for Caldwell College’s online programs. However, Caldwell College does not offer the online educational programs marketed by Ed4Mil recruiters. Relator alleges that, in order to create the appearance that Caldwell College does offer

such programs, Defendant Ed4Mil established a relationship with Defendant Penn Foster, whereby Penn Foster agreed to “re-brand” its courses to falsely indicate that they are offered by Defendant Caldwell College. But for Penn Foster’s and Caldwell College’s knowing participation in this scheme, the ESOs and their equivalents would not have authorized the payment of excessive TA funds by the National Guard and the United States Armed Forces.

16. Relator alleges that Defendant Ed4Mil’s sales representatives conceal the existence of Ed4Mil and Penn Foster during the recruiting process in order to deceive National Guard members and members of the military into believing they are enrolling at Caldwell College, an accredited four-year college. All recruitment brochures distributed to National Guard members and members of the U.S. military by Ed4Mil representatives bear the name and logo of Caldwell College. The names “Ed4Mil” and “Penn Foster” do not appear anywhere on the brochures. Additionally, recruiters for Ed4Mil offer \$400 Best Buy gift cards to each guardsman as an inducement to enroll in the program.

17. Sales representatives for Defendant Ed4Mil personally assist students during the computerized enrollment process to ensure they do not deviate from procedures which might identify the existence of the concealed entities. As an added deception, Ed4Mil utilizes Caldwell College email accounts and remote Caldwell College telephone extensions in order to correspond with putative enrollees. Certificates and diplomas awarded to students upon completion of their coursework bear the name and logo of Caldwell College.

18. As a consequence of the above-described deceptions, Defendant Ed4Mil is able to induce unwitting National Guard Educational Support Officers (“ESO’s”), Army Continuing Education System Counselors (“ACES’s”), and their equivalents to authorize fraudulent, excessive payments to Caldwell College for what are, in reality, less expensive Penn Foster

courses. Almost all courses offered in this manner by Caldwell are priced slightly below the \$4500 fiscal ceiling imposed by the DoD, while the actual cost for the courses charged by Penn Foster rarely exceed \$1000. For example, an online gunsmith course for which Caldwell College charges \$4,331 is billed by Penn Foster to Ed4Mil at \$708. If ESOs and their equivalents were aware the courses were actually being offered by Penn Foster and not Caldwell, they would, at most, only authorize disbursement of the lesser amount. In fact, ESOs in several states have already suspected an improper billing relationship between Ed4Mil and Caldwell, and have declined to authorize further disbursements to Caldwell through Ed4Mil.

19. In an attempt to conceal the fact that U.S. government funds are being unlawfully obtained, recruiters from Ed4Mil deceive ESOs and their equivalents, who are required to certify the accuracy of applications for TA, into approving TA payments directly to Caldwell College. Caldwell College then deducts a 10 percent fee, and in effect “launders” TA funding by remitting the balance to Ed4Mil. In an additional effort to “launder” the TA funds, Ed4Mil remits the true cost of the course to Penn Foster and retains a profit for itself.

20. Defendant Ed4Mil recruits an average of 100 National Guard members and members of the U.S. military per month, and has been operating for approximately two years. Prior to that time, Ed4Mil operated under various other names, including JWeb Technology and GenTech Training. In turn, those entities established relationships with other educational institutions, including Liberty University, Harrisburg Area Community College, Ashworth University, Andrew Jackson University, and Shippensburg University. Relator believes Ed4Mil’s predecessor iterations engaged in fraudulent activity similar to the deceptive practices currently occurring with Caldwell College and Penn Foster.

21. Relator estimates that financial losses to the government due to the Defendants’

fraudulent conduct are in excess of \$5 million.

COUNT I

Violation of the False Claims Act, 31 U.S.C. § 3729(a) prior to and after the amendments enacted on May 20, 2009

22. Relator realleges and incorporates by reference the allegations of paragraphs 1-21 of this complaint.

23. This count sets forth claims for treble damages and forfeitures under the Federal False Claims Act, 31 U.S.C. § 3729-3732.

24. Through the acts described above, Defendants and their agents and employees knowingly caused to be presented false and/or fraudulent claims, records, and statements in order to obtain excessive federal Tuition Assistance funds for National Guardsmen and members of the U.S. military wishing to take online courses.

25. Under the False Claims Act, 31 U.S.C. § 3729(a), in effect prior to May 20, 2009, Defendants have violated:

- (a) 31 U.S.C. § 3729(a)(1) by knowingly presenting, or causing to be presented, to an officer or employee of the United States Government or a member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
- (b) 31 U.S.C. § 3729(a)(2) by knowingly making, using, or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Government; and/or
- (c) 31 U.S.C. § 3729(a)(3) by conspiring to defraud the Government by getting a false or fraudulent claim allowed or paid.

26. Under the False Claims Act, 31 U.S.C. § 3729(a)(1) as amended on May 20,

2009, Defendants have violated:

- (a) 31 U.S.C. § 3729(a)(1)(A) by knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
- (b) 31 U.S.C. § 3729(a)(1)(B) by knowingly making, using, or causing to be made or used a false record or statement material to a false or fraudulent claim; and/or
- (c) 31 U.S.C. § 3729(a)(1)(C) by conspiring to commit a violation of subparagraph (A) or (B).

27. The United States, unaware of the falsity of the claims, approved, paid, and participated in payments made by the United States for claims that otherwise would not have been allowed.

28. By reason of Defendants' false claims, the United States has been damaged, and possibly continues to be damaged.

COUNT II

Violation of the Reverse False Claims Act, 31 U.S.C. § 3729(a) prior to and after the amendments enacted on May 20, 2009

29. Relator realleges and incorporates by reference the allegations of paragraphs 1-21 above.

30. Through the acts described above, Defendants and their agents and employees intentionally and knowingly failed to report students who did not complete the online courses in order to "conceal, avoid, or decrease" an obligation by Defendants to return federal funding in the form of Tuition Assistance program funds to the United States Armed Forces.

31. Under the False Claims Act, 31 U.S.C. § 3729(a) in effect prior to May 20, 2009,

Defendants have violated 31 U.S.C. § 3729(a)(7) by knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

32. Under the False Claims Act, 31 U.S.C. § 3729(a)(1) as amended on May 20, 2009, Defendants have violated 31 U.S.C. § 3729(a)(1)(G) by knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the Government.

33. Defendants' fraudulent concealment and intentional failure to report students who did not complete the online courses in order to avoid refunding federal money in the form of Tuition Assistance program funds constitutes an unlawful avoidance of an obligation to pay money owed to the United States.

34. Defendants' unlawful conduct is continuing in nature and has caused the United States to suffer damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff/Relator requests that judgment be entered against Defendants, ordering that:

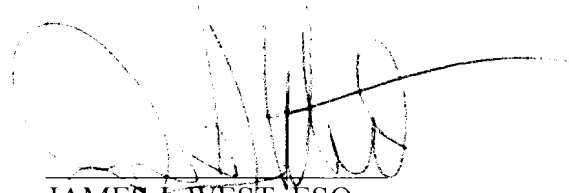
a. Defendants pay an amount equal to three times the amount of damages the United States has sustained because of Defendants' actions, plus a civil penalty against Defendants of not less than \$5,500, and not more than \$11,000, for each violation of 31 U.S.C. § 3729;

- b. Relator be awarded the maximum amount allowed pursuant to 31 U.S.C. § 3730(d);
- c. Defendants cease and desist from violating the False Claims Act 31 U.S.C. § 3729 *et seq.*;
- d. Relator be awarded all costs of this action, including attorney's fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d); and
- e. The United States and Relator be granted all such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Relator, on behalf of the United States, hereby demands a trial by jury.

Dated this 12th day of October, 2010.



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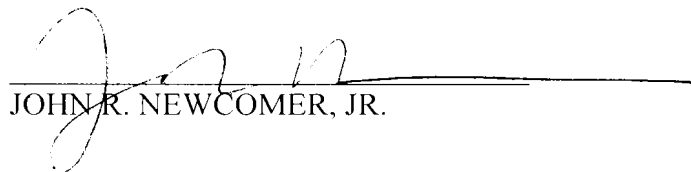
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by Certified Mail, Return Receipt Requested, this 12th day of October, 2010 to the following:

Honorable Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530-0001

U.S. Attorney David J. Hickton
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